

BILL LOCKYER, Attorney General
of the State of California
PAUL C. AMENT, State Bar No. 60427
Supervising Deputy Attorney General
ELAINE GYURKO
Senior Legal Analyst
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-4944
Facsimile: (213) 897-9395

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2037

ALEXANDER BAUTISTA NARVAEZ
12524 Volunteer Avenue
Norwalk, California 90650

A C C U S A T I O N

Respiratory Care Practitioner License No. 21371

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about March 20, 2000, the Respiratory Care Board issued Respiratory Care Practitioner License Number 21371 to Alexander Bautista Narvaez (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2007, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references

1 are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: "The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
4 the Respiratory Care Practice Act]."

5 5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
6 revoke licenses to practice respiratory care as provided in this chapter."

7 6. Section 3750 of the Code states:

8 "The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 " . . .

12 "(d) Conviction of a crime that substantially relates to the qualifications, functions,
13 or duties of a respiratory care practitioner. The record of conviction or a certified copy
14 thereof shall be conclusive evidence of the conviction.

15 " . . .

16 "(j) The commission of any fraudulent, dishonest, or corrupt act which is
17 substantially related to the qualifications, functions, or duties of a respiratory care
18 practitioner. . . ."

19 7. Section 3750.5 of the Code states:

20 "In addition to any other grounds specified in this chapter, the board may deny,
21 suspend, or revoke the license of any applicant or license holder who has done any of the
22 following:

23 "(a) Obtained or possessed in violation of law, or except as directed by a licensed
24 physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished
25 or administered to another, any controlled substances as defined in Division 10
26 (commencing with Section 11000) of the Health and Safety Code. . . .

27 " . . .

28 "(d) Been convicted of a criminal offense involving the consumption or

1 self-administration of any of the substances described in subdivisions (a) and (b), or the
2 possession of, or falsification of a record pertaining to, the substances described in
3 subdivision (a), in which event the record of the conviction is conclusive evidence thereof.
4 ...”

5 8. Section 3752 of the Code states:

6 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
7 made to a charge of any offense which substantially relates to the qualifications, functions,
8 or duties of a respiratory care practitioner is deemed to be a conviction within the meaning
9 of this article. The board shall order the license suspended or revoked, or may decline to
10 issue a license, when the time for appeal has elapsed, or the judgment of conviction has
11 been affirmed on appeal or when an order granting probation is made suspending the
12 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
13 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of
14 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
15 indictment.”

16 9. Section 490 of the Code states:

17 “A board may suspend or revoke a license on the ground that the licensee has been
18 convicted of a crime, if the crime is substantially related to the qualifications, functions, or
19 duties of the business or profession for which the license was issued. A conviction within
20 the meaning of this section means a plea or verdict of guilty or a conviction following a
21 plea of nolo contendere. Any action which a board is permitted to take following the
22 establishment of a conviction may be taken when the time for appeal has elapsed, or the
23 judgment of conviction has been affirmed on appeal, or when an order granting probation
24 is made suspending the imposition of sentence, irrespective of a subsequent order under the
25 provisions of Section 1203.4 of the Penal Code.”

26 10. California Code of Regulations, Title 16, section 1399.370, states:

27 “For the purposes of denial, suspension, or revocation of a license, a crime or act
28 shall be considered to be substantially related to the qualifications, functions or duties of a

1 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
2 perform the functions authorized by his or her license or in a manner inconsistent with the
3 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
4 those involving the following:

5 “ . . .

6 “(b) Conviction of a crime involving fiscal dishonesty theft, or larceny. . . .”

7 COST RECOVERY

8 11. Section 3753.5, subdivision (a) of the Code states:

9 "In any order issued in resolution of a disciplinary proceeding before the board, the
10 board or the administrative law judge may direct any practitioner or applicant found to
11 have committed a violation or violations of law to pay to the board a sum not to exceed the
12 costs of the investigation and prosecution of the case."

13 12. Section 3753.7 of the Code states:

14 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
15 include attorney general or other prosecuting attorney fees, expert witness fees, and other
16 administrative, filing, and service fees."

17 13. Section 3753.1, subdivision (a) of the Code states:

18 "An administrative disciplinary decision imposing terms of probation may include,
19 among other things, a requirement that the licensee-probationer pay the monetary costs
20 associated with monitoring the probation."

21 CONTROLLED SUBSTANCE

22 14. Methamphetamine is a Schedule II controlled substance pursuant to Health
23 and Safety Code Section 11055.

24 FIRST CAUSE FOR DISCIPLINE

25 (Conviction of a Crime)

26 15. Respondent is subject to disciplinary action under sections 3750,
27 subdivision (d), 3750.5, subdivision (d), 3752, and 490 of the Code, and California Code of
28 Regulations, Title 16, section 1399.370, subdivision (b), in that he was convicted of a crime

1 substantially related to the qualifications, functions or duties of a respiratory care practitioner. The
2 circumstances are as follows:

3 A. On or about October 9, 2005, a Daly City police officer ran a records check
4 on the license plate number of the vehicle respondent was driving and was informed the
5 vehicle had been reported stolen. The office made an enforcement stop and respondent
6 was placed under arrest. A records check also revealed respondent was driving on a
7 suspended license. The officer searched the vehicle and found a driver's license and blank
8 personal checks which belonged to another person, a baggie containing a crystal-like
9 substance resembling methamphetamine and a clear glass smoking pipe. The officer
10 located respondent's wallet in the vehicle and found credit cards issued to two other
11 people. Respondent gave a voluntary statement to the officer in which he admitted the
12 following: the methamphetamine and smoking pipe belonged to him; he rented the vehicle
13 three months prior and failed to return it; he used credit cards which did not belong to him
14 for purchases; he was intending to cash the stolen checks; and his license was suspended.

15 B. On October 11, 2005, a complaint was filed against respondent in a
16 criminal proceeding entitled *People v. Alexander Bautista Narvaez*, in Superior Court, San
17 Mateo County, Case Number SC059797A. He was charged with receiving stolen
18 property, a violation of Penal Code section 496(a), a felony (count 1); possession of a
19 forged check with intent to defraud, a violation of Penal Code section 475(c), a felony
20 (count 2); unauthorized use of personal information for unlawful purpose, a violation of
21 Penal Code section 530.5(a), a felony, (count 3); unlawful taking of a vehicle, a violation
22 of Vehicle Code section 10851(a), a felony, (count 4); and possession of the controlled
23 substance, methamphetamine, a violation of Health and Safety Code section 11377(a), a
24 felony (count 5).

25 C. On or about November 9, 2005, respondent was convicted by a plea of
26 nolo contendere to unlawful taking of a vehicle, a violation of Vehicle Code section
27 10851(a), (count 4), and possession of the controlled substance, methamphetamine, a
28 violation of Health and Safety Code section 11377(a), (count 5). He was placed on

1 probation for three years. The court ordered him to pay fines and fees in the amount of
2 \$440.00 plus a monthly probation fee of \$75.00, serve 120 days in county jail (with credit
3 for 49 days) which was modifiable to a residential treatment program; and to register as a
4 narcotics offender.

5 SECOND CAUSE FOR DISCIPLINE

6 (Possession of a Controlled Substance)

7 16. Respondent is subject to disciplinary action under section 3750.5,
8 subdivision (a) of the Code in that he possessed the controlled substance methamphetamine. The
9 facts and circumstances set forth in Paragraph 15 of this Accusation are incorporated herein by
10 reference.

11 THIRD CAUSE FOR DISCIPLINE

12 (Commission of a Fraudulent, Dishonest or Corrupt Act)

13 17. Respondent is subject to disciplinary action under section 3750, subdivision
14 (j) of the Code, in that he committed a fraudulent, dishonest or corrupt act substantially related to
15 the qualifications, functions, or duties of a respiratory care practitioner. The facts and
16 circumstances set forth in Paragraph 15 of this Accusation are incorporated herein by reference.

17 DISCIPLINE CONSIDERATIONS

18 18. To determine the degree of discipline, if any, to be imposed on Respondent,
19 Complainant alleges that on or about April 9, 2003, in a prior disciplinary action entitled In the
20 Matter of the Accusation Against Alexander Bautista Narvaez before the Respiratory Care Board
21 of California, Case Number R-1773, respondent was charged with having a conviction in 2001 for
22 possession of a forged check, and failure to disclose the conviction on his license renewal
23 application. The Board issued a decision effective July 7, 2003, in which Respondent's license
24 was placed on probation for two years with various terms and conditions. That decision is
25 incorporated herein by reference.

26
27 PRAYER

28 WHEREFORE, Complainant requests that a hearing be held on the matters herein

1 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

2 1. Revoking or suspending Respiratory Care Practitioner License Number
3 21371 issued to Alexander Bautista Narvaez;

4 2. Ordering Alexander Bautista Narvaez to pay the Respiratory Care Board
5 the costs of the investigation and enforcement of this case, and if placed on probation, the costs of
6 probation monitoring;

7 3. Taking such other and further action as deemed necessary and proper.

8 DATED: July 18, 2006

9
10
11 Original signed by Liane Zimmerman for:
12 STEPHANIE NUNEZ
13 Executive Officer
14 Respiratory Care Board of California
15 Department of Consumer Affairs
16 State of California
17 Complainant
18
19
20
21
22
23
24
25
26
27
28